

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO.
12M-5048-JGD

UNITED STATES OF AMERICA

v.

KIPP GIBBS

ORDER ON DEFENDANT'S COMPETENCY TO STAND TRIAL

June 29, 2012

DEIN, M.J.

The Court hereby finds, by a preponderance of the evidence, that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. The Court makes this finding after a hearing held on June 29, 2012, at which time the government presented the testimony of Dr. Shawn Channell, a forensic psychologist affiliated with Fort Devens Medical Center, who was cross-examined by defense counsel and the defendant. This Court bases the finding of incompetency on the testimony of Dr. Shawn Channell, his report dated April 23, 2012, arguments of counsel, and the defendant's demeanor and statements both at the hearing and at previous hearings in this case.

WHEREFORE, in accordance with 18 U.S.C. § 4241(d), the Court hereby commits the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility:

- (1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and
- (2) for an additional reasonable period of time until -

- (a) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or
- (b) the pending charges against him are disposed of according to law; whichever is earlier.

The Court notes that defense counsel has requested placement at Fort Devens.

The Court further orders the Bureau of Prisons to provide a report, within sixty days of entry of this Order, regarding (1) whether a substantial probability exists that in the foreseeable future the defendant will attain the capacity to permit the proceedings to go forward, and (2) if so, an approximation of the anticipated period required to enable the defendant to attain the capacity to permit the proceedings to go forward. It is further ordered that the period of delay resulting from the hospitalization of the defendant for the purposes described above and any subsequent judicial proceedings to determine the defendant's competency shall be excluded from the computation of deadlines under the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(A).

RIGHT OF APPEAL

The parties are hereby advised that, under the provisions of Federal Rule of Criminal Procedure 59, any party who objects to this order may file an objection with the Clerk of this Court within 14 days of the party's receipt of this Order.

/ s / Judith Gail Dein
Judith Gail Dein
United States Magistrate Judge